UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

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REPLY TO THE ATTENTION OF

May 22, 1995

VIA FEDERAL EXPRESS

Joseph Nassif
Linda W. Tape
Coburn & Croft
Suite 2900
One Mercantile Center
Saint Louis, Missouri 63101

RE: Standard Scrap Metal/Chicago International Exporting Site, Chicago, Illinois
U.S. v. Steven Cohen, et al.
Case No. 94 C 6801

Dear Mr. Nassif and Ms. Tape:

Enclosed are documents relating to the operations of Standard Scrap, which you requested by letter dated May 16, 1995, and which you may already have as they were submitted by Standard Scrap to EPA as a result of historical violations at the site.

Also enclosed is sampling data which you requested. As you will notice, and as we have indicated to you several times in the past including by letter dated March 21, 1995, sample results indicate that defendants are currently releasing hazardous substances, including lead, cadmium, and PCBs, at or from the shredder and/or separator at the site. Not only are such releases a violation of EPA's Unilateral Administrative Order number V-W-'95-C-283 ("Order"), but releases of PCB contaminated material, some of which is contaminated at levels up to 2894 ppm PCBs, are violations of TSCA.

The shredder and separator are currently releasing hazardous substances. Based in part on your letter dated May 19, 1995, and on current observations by EPA at the site, the Respondents to the Order apparently do not intend to comply with all terms of the Order, including those which require cessation of the shredder and separator even though Respondents have been on notice that those processes are currently causing releases of hazardous substances. Therefore, EPA may seek to enforce the Order and seek penalties for violations thereof.

Furthermore, EPA does not agree with your assertions regarding the currently pending access issue. First, defendants denied access to EPA and thereby violated EPA's requests for access. In fact, Judge Bucklo ordered the defendants to allow EPA access to sample in December 1994. As a result of the court's order, EPA gained access and found substantial contamination on the disputed portion of the site. Due to that contamination, and due to a subsequent impending order from the court regarding access for the remaining part of EPA's removal action, defendants chose to avoid an almost certain order for the entire removal, which would have transferred control of the entire site to EPA, and decided to comply with CERCLA and allow EPA access to the entire site to finish the removal action.

The only reason the clean-up is now almost complete is because the United States sought relief for access from the court, not because the defendants have been cooperative. Your assertion that the cleanup "could not have occurred in the absence of our clients' cooperation" contains unlikely speculation. If your clients did not cooperate with EPA, they would probably have lost control of their facility to EPA for the last several months, EPA's removal action would probably be completed by now, and defendants would be subject to an even higher penalty for failing to comply with the post-sampling portion of EPA's access request. Defendants confusion between compliance with the law and "cooperation" continually complicates this and related matters. Defendants' view of EPA's access authority, as set forth in your May 19, 1995 letter is further discussed below, as it relates to an appropriate penalty amount.

Secondly, your assertion that no court has assessed a penalty for violating EPA's access authority for sampling is incorrect. See U.S. v. Taylor, 8 F.3d 1074 (6th Cir. 1993).

Third, there are several factors which a court considers in assessing a penalty amount, one of which is ability to pay. See U.S. v. Genzale Plating, Inc., 807 F. Supp. 937 (E.D. N.Y. 1992). EPA has tried to determine the defendants financial status through its information requests under Section 104(e) of CERCLA. As you know, EPA cannot make that determination because defendants have failed to comply with Section 104 of CERCLA which requires them to respond to EPA's request for information. Other factors include but are not limited to, past violations, harm to the public, and good or bad faith by the defendants.

As you know, defendants have violated EPA regulations in the past (See In re Standard Scrap Metal Company TSCA No. TSCA-V-C-288. EPA obtained a judgment in the amount of $30,000 against the Respondent Standard Scrap, which was owned and operated by defendant Lawrence Cohen and others. (See Attached Deposition Transcript and documents submitted by Standard Scrap in In re Standard Scrap.) That judgement has not yet been collected. Defendants have also violated EPA's Administrative Order

requiring them to conduct the removal action and are therefore liable under Section 106 of CERCLA for civil penalties.

As you surely know, deterrence is the purpose behind civil penalties. See Genzale Plating, Inc., at 937 citing U.S. v. Crown Roll Leaf, 29 E.R.C. 2025 (D.N.J. 1989). As indicated above, and as evidenced by defendants' troubling view of EPA's access authority, as set forth in your May 19, 1995 letter, and given defendants failure to comply with the Unilateral Administrative Order requiring respondents to conduct the removal action, their failure to comply with the Order regarding the release of hazardous substances from the shredder and separator, their recent air and TSCA violations, and the likelihood that EPA will be investigating the site in the future, deterrence is extremely necessary in this case.

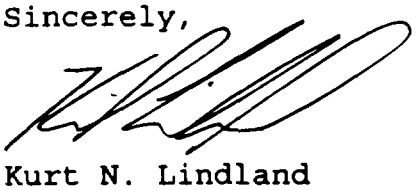
Harm to the public is fairly easy for the United States to show in this case. The presence of people near a known source of contamination is enough to show "harm to the public". As you know, there are residences within 100 feet of the site in our case, as well as daily visitors to the site who sell and buy scrap metal, or otherwise transact business with the defendants.

While EPA believes it can obtain a substantial penalty for access violations in this case, EPA may be willing to settle its penalty claims for an appropriate sum. As we indicated during our May 16, 1995 telephone conversation, EPA is prepared to discuss settlement during our scheduled teleconference on June 6, 1995.

Also, enclosed are suggested changes to the deed restriction you proposed by your May 19, 1995 letter. If these changes are acceptable, please record the restriction with the appropriate title office and send the undersigned a copy of the recorded deed restriction before June 1, 1995.

Please do not hesitate to call me at (312) 886-6831 if you have any questions regarding this matter.

Sincerely,



Kurt N. Lindland
Assistant Regional Counsel

Enclosures

cc: Brian Havey, Assistant U.S. Attorney
United States Attorney's Office
Northern District of Illinois